

**Letter of Findings Number: 01-20130539
Individual Income Tax
For Tax Year 2009**

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ISSUES

I. Individual Income Tax.

Authority: IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayers protest the imposition of individual income tax.

II. Tax Administration—Collection fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4(a).

Taxpayers protest the imposition of collection fees.

STATEMENT OF FACTS

Taxpayers are individuals. Taxpayers filed an Indiana individual income tax return for a part-year or full-year nonresident claiming a refund for the tax year 2009. The Indiana Department of Revenue ("Department") processed the tax return and granted a refund of \$269.00. A W-2 search revealed Taxpayers received Indiana wage income in 2009. On May 13, 2011, the Department issued a proposed assessment for the tax year 2009 in the total amount of \$2,401.99.

After being contacted by Taxpayers, the Department granted Taxpayers an extension of four months on July 12, 2011. This extension was granted to provide Taxpayers additional time to provide information or pay the liability. On November 9, 2011, the extension expired, and the Department mailed a Demand Notice for Payment to Taxpayers. Taxpayers contacted the Department again, and on November 16, 2011, the Department granted Taxpayers a second extension of two months to provide additional information or pay the liability. This second extension expired January 17, 2012. Taxpayers had not provided any additional information or paid the liability, and the Department filed a tax warrant, engaging the services of a collection agency. On February 6, 2012, the Department granted Taxpayers a third extension, recalled the warrant, and removed the collection fees from the liability. This final extension of four months expired on June 5, 2012, and the Department once again filed a tax warrant and engaged the services of a collection agency. Taxpayers indicate that they paid the liability in full on November 13, 2012 in order to purchase a house. The payment totaled \$2,767.61.

On June 21, 2013, Taxpayers provided a copy of a corrected W-2 (W-2C) showing that Taxpayers did not receive Indiana wage income for the tax year 2009. The Department promptly refunded \$2,249.58 base tax plus \$43.60 interest (for a total of \$2,293.18). The Department did not refund \$518.03, of which \$269.00 is base tax, \$39.63 is interest, and \$209.40 is collection fees.

Taxpayers protest the assessment of base tax, interest, and collection fees. An administrative hearing was held, and this letter of findings results. Further facts will be supplied as needed.

I. Individual Income Tax.

DISCUSSION

Taxpayers protest the assessment of base tax and interest. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The issue is whether Taxpayers have met their burden to show the Department's proposed assessment is incorrect.

The Department conducted a W-2 search which revealed that Taxpayers received Indiana wage income in the tax year 2009 and properly issued a proposed assessment based on that information. IC § 6-8.1-5-1. Taxpayers provided a copy of a corrected W-2 (W-2C) showing that Taxpayers did not receive Indiana wage income for the tax year 2009. Taxpayers have met their burden to prove this assessment is incorrect. Taxpayers' protest on the assessment of base tax and interest is sustained.

FINDING

Taxpayers' protest is sustained regarding the assessment of base tax and interest.

II. Tax Administration—Collection fees.

DISCUSSION

Taxpayers protest the imposition of collection fees. The issue is whether the Department's imposition of collection fees is proper.

IC § 6-8.1-5-1 provides in relevant part:

(b) If the department reasonably believes that a person has not reported the proper amount of tax due, the

department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

...

(d) The notice shall state that the person has forty-five (45) days from the date the notice is mailed to pay the assessment or to file a written protest. . . .

...

(j) The department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties that it finds owing because:

- (1) the person failed to properly respond within the forty-five (45) day period;
- (2) the person requested a hearing but failed to appear at that hearing; or
- (3) after consideration of the evidence presented in the protest or hearing, the department finds that the person still owes tax.

(k) The department shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#).

IC § 6-8.1-8-2(a) and (b) provides:

(a) Except as provided in [IC 6-8.1-5-3](#) and sections 16 and 17 of this chapter, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant. The demand notice must state the following:

- (1) That the person has ten (10) days from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded.
- (2) The statutory authority of the department for the issuance of a tax warrant.
- (3) The earliest date on which a tax warrant may be filed and recorded.
- (4) The statutory authority for the department to levy against a person's property that is held by a financial institution.
- (5) The remedies available to the taxpayer to prevent the filing and recording of the judgment.

If the department files a tax warrant in more than one (1) county, the department is not required to issue more than one (1) demand notice.

(b) If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10 [percent]) of the unpaid tax is added to the total amount due.

In addition, IC § 6-8.1-8-4(a) provides:

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

In this case, the proposed assessment advanced through the legally required procedures. The Department issued a valid proposed assessment based on a W-2 search that revealed Taxpayers received Indiana wage income in the tax year 2009. The Department sent two notices, granted three extensions, and filed a tax warrant for the liability twice, having recalled one. The Department granted Taxpayers sufficient time during the process to provide information showing that the assessment was incorrect. Only after a second warrant was filed did Taxpayers establish that the proposed assessment was incorrect.

The Department incurred the fees based on a valid Department assessment that advanced to a tax warrant even though Taxpayer later established that the assessment was incorrect. The fees collected are proper if the fees were paid based on the information available to the Department at the time the fees were collected rather than at some time after collection. Since that is the case here, Taxpayers' protest of the imposition of collection fees is denied.

FINDING

Taxpayers' protest is denied regarding the imposition of collection fees.

SUMMARY

Taxpayers' protest is sustained regarding the assessment of base tax and interest and denied regarding the imposition of collection fees.

